



# House of Representatives

General Assembly

**File No. 541**

February Session, 2016

Substitute House Bill No. 5606

*House of Representatives, April 7, 2016*

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THE CONNECTICUT REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2016*) Sections 1 to 18,  
2 inclusive, of this act may be cited as the "Connecticut Revised Uniform  
3 Fiduciary Access to Digital Assets Act".

4 Sec. 2. (NEW) (*Effective October 1, 2016*) As used in sections 1 to 18,  
5 inclusive, of this act:

6 (1) "Account" means an arrangement under a terms-of-service  
7 agreement in which a custodian carries, maintains, processes, receives  
8 or stores a digital asset of the user or provides goods or services to the  
9 user;

10 (2) "Agent" means an attorney-in-fact granted authority under a  
11 durable or nondurable power of attorney;

12 (3) "Carries" means engages in the transmission of an electronic

13 communication;

14 (4) "Catalogue of electronic communications" means information  
15 that identifies each person with which a user has had an electronic  
16 communication, the time and date of the communication, and the  
17 electronic address of the person;

18 (5) "Conservator" means a person appointed by a court to manage  
19 the estate of a living individual. "Conservator" includes a limited  
20 conservator;

21 (6) "Content of an electronic communication" or "content of  
22 electronic communications" means information concerning the  
23 substance or meaning of the communication which:

24 (A) Has been sent or received by a user;

25 (B) Is stored in electronic form by a custodian providing an  
26 electronic-communication service to the public or is carried or  
27 maintained by a remote-computing service to the public; and

28 (C) Is not readily accessible to the public;

29 (7) "Court" means a court of competent jurisdiction, including, but  
30 not limited to, the Probate Court or the Superior Court. A judge of the  
31 Probate Court or the Superior Court shall be deemed a judge of  
32 competent jurisdiction for the purposes of 18 USC 2510(9), as amended  
33 from time to time, with respect to an order issued under any provision  
34 of sections 1 to 18, inclusive, of this act;

35 (8) "Custodian" means a person that carries, maintains, processes,  
36 receives or stores a digital asset of a user;

37 (9) "Designated recipient" means a person chosen by a user using an  
38 online tool to administer digital assets of the user;

39 (10) "Digital asset" means an electronic record in which an  
40 individual has a right or interest. "Digital asset" does not include an  
41 underlying asset or liability unless the asset or liability is itself an

42 electronic record;

43 (11) "Electronic" means relating to technology having electrical,  
44 digital, magnetic, wireless, optical, electromagnetic or similar  
45 capabilities;

46 (12) "Electronic communication" has the meaning set forth in 18 USC  
47 2510(12), as amended from time to time;

48 (13) "Electronic-communication service" means a custodian that  
49 provides to a user the ability to send or receive an electronic  
50 communication;

51 (14) "Fiduciary" means an original, additional or successor executor,  
52 conservator, agent or trustee;

53 (15) "Information" means data, text, images, videos, sounds, codes,  
54 computer programs, software, databases or the like;

55 (16) "Online tool" means an electronic service provided by a  
56 custodian that allows the user, in an agreement distinct from the  
57 terms-of-service agreement between the custodian and the user, to  
58 provide directions for disclosure or nondisclosure of digital assets to a  
59 third person;

60 (17) "Person" means an individual, estate, business or nonprofit  
61 entity, public corporation, government or governmental subdivision,  
62 agency or instrumentality or other legal entity;

63 (18) "Executor" means an executor, administrator, special  
64 administrator, temporary administrator of an estate or any person that  
65 performs substantially the same functions as such executor,  
66 administrator, special administrator or temporary administrator under  
67 the laws of this state, other than sections 1 to 18, inclusive, of this act;

68 (19) "Power of attorney" means a record that grants an agent  
69 authority to act in the place of a principal;

70 (20) "Principal" means an individual who grants authority to an

71 agent in a power of attorney;

72 (21) "Conserved person" means an individual for whom a  
73 conservator has been appointed. "Conserved person" includes a  
74 respondent, as defined in section 45a-644 of the general statutes, for  
75 whom an application for the appointment of a conservator is pending;

76 (22) "Record" means information that is inscribed on a tangible  
77 medium or that is stored in an electronic or other medium and is  
78 retrievable in perceivable form;

79 (23) "Remote-computing service" means a custodian that provides to  
80 a user computer-processing services or the storage of digital assets by  
81 means of an electronic communications system, as defined in 18 USC  
82 2510(14), as amended from time to time;

83 (24) "Terms-of-service agreement" means an agreement that controls  
84 the relationship between a custodian and a user;

85 (25) "Trustee" means a fiduciary with legal title to property under an  
86 agreement or declaration that creates a beneficial interest in another.  
87 "Trustee" includes a successor trustee;

88 (26) "User" means a person that has an account with a custodian;  
89 and

90 (27) "Will" includes a codicil, testamentary instrument that only  
91 appoints an executor and instrument that revokes or revises a  
92 testamentary instrument.

93 Sec. 3. (NEW) (*Effective October 1, 2016*) (a) Sections 1 to 18, inclusive,  
94 of this act apply to:

95 (1) A fiduciary acting under a will or power of attorney executed  
96 before, on or after October 1, 2016;

97 (2) An executor acting for a decedent who died before, on or after  
98 October 1, 2016;

99 (3) A conservatorship proceeding commenced before, on or after  
100 October 1, 2016; and

101 (4) A trustee acting under a trust created before, on or after October  
102 1, 2016.

103 (b) Sections 1 to 18, inclusive, of this act apply to a custodian if the  
104 user resides in this state or resided in this state at the time of the user's  
105 death.

106 (c) Sections 1 to 18, inclusive, of this act do not apply to a digital  
107 asset of an employer used by an employee in the ordinary course of  
108 the employer's business.

109 Sec. 4. (NEW) (*Effective October 1, 2016*) (a) A user may use an online  
110 tool to direct the custodian to disclose to a designated recipient, or not  
111 to disclose to a designated recipient, some or all of the user's digital  
112 assets, including the content of electronic communications. If the  
113 online tool allows the user to modify or delete a direction at all times, a  
114 direction regarding disclosure using an online tool overrides a  
115 contrary direction by the user in a will, trust, power of attorney or  
116 other record.

117 (b) If a user has not used an online tool to give direction under  
118 subsection (a) of this section or if the custodian has not provided an  
119 online tool to give such direction, the user may allow or prohibit in a  
120 will, trust, power of attorney or other record disclosure to a fiduciary  
121 of some or all of the user's digital assets, including the content of  
122 electronic communications sent or received by the user.

123 (c) A user's direction under subsection (a) or (b) of this section  
124 overrides a contrary provision in a terms-of-service agreement that  
125 does not require the user to act affirmatively and distinctly from the  
126 user's assent to the terms-of-service agreement.

127 Sec. 5. (NEW) (*Effective October 1, 2016*) (a) Sections 1 to 18, inclusive,  
128 of this act do not change or impair a right of a custodian or a user  
129 under a terms-of-service agreement to access and use digital assets of

130 the user.

131 (b) Sections 1 to 18, inclusive, of this act do not give a fiduciary or a  
132 designated recipient any new or expanded rights other than those held  
133 by the user for whom, or for whose estate, the fiduciary or designated  
134 recipient acts or represents.

135 (c) A fiduciary's or designated recipient's access to digital assets  
136 may be modified or eliminated by a user, by federal law or by a terms-  
137 of-service agreement if the user has not provided direction under  
138 section 4 of this act.

139 Sec. 6. (NEW) (*Effective October 1, 2016*) (a) When disclosing digital  
140 assets of a user under sections 1 to 18, inclusive, of this act, the  
141 custodian may, at its sole discretion:

142 (1) Grant a fiduciary or designated recipient full access to the user's  
143 account;

144 (2) Grant a fiduciary or designated recipient partial access to the  
145 user's account sufficient to perform the tasks with which the fiduciary  
146 or designated recipient is charged; or

147 (3) Provide a fiduciary or designated recipient a copy in a record of  
148 any digital asset that, on the date the custodian received the request for  
149 disclosure, the user could have accessed if the user were alive and had  
150 full capacity and access to the account.

151 (b) A custodian may assess a reasonable administrative charge for  
152 the cost of disclosing digital assets under sections 1 to 18, inclusive, of  
153 this act.

154 (c) A custodian need not disclose under any provision of sections 1  
155 to 18, inclusive, of this act a digital asset deleted by a user.

156 (d) If a user directs or a fiduciary requests a custodian to disclose  
157 under any provision of sections 1 to 18, inclusive, of this act some, but  
158 not all, of the user's digital assets, the custodian need not disclose the

159 assets if segregation of the assets would impose an undue burden on  
160 the custodian. If the custodian believes the direction or request  
161 imposes an undue burden on the custodian, the custodian or fiduciary  
162 may seek an order from the court to disclose:

163 (1) A subset limited by date of the user's digital assets;

164 (2) All of the user's digital assets to the fiduciary or designated  
165 recipient;

166 (3) None of the user's digital assets; or

167 (4) All of the user's digital assets to the court for review in camera  
168 for the purpose of permitting the court to issue an order pursuant to  
169 sections 1 to 18, inclusive, of this act.

170 Sec. 7. (NEW) (*Effective October 1, 2016*) If a deceased user consented  
171 to, or a court directs disclosure of, the contents of electronic  
172 communications of the user, the custodian shall disclose to the  
173 executor of the estate of the user the content of an electronic  
174 communication sent or received by the user if the executor gives the  
175 custodian:

176 (1) A written request for disclosure in physical or electronic form;

177 (2) A certified copy of the death certificate of the user;

178 (3) A certified copy of the certificate of appointment as executor;

179 (4) Unless the user provided direction using an online tool, a copy of  
180 the user's will, trust, power of attorney or other record evidencing the  
181 user's consent to disclosure of the content of electronic  
182 communications; and

183 (5) If requested by the custodian:

184 (A) A number, username, address or other unique subscriber or  
185 account identifier assigned by the custodian to identify the user's  
186 account;

187 (B) Evidence linking the account to the user; or

188 (C) A court record or order that includes a finding by the court that:

189 (i) The user had a specific account with the custodian that is  
190 identifiable by the information specified in subparagraph (A) of this  
191 subdivision;

192 (ii) Disclosure of the content of electronic communications of the  
193 user would not violate 18 USC 2701 et seq., 47 USC 222, or other  
194 applicable law, as amended from time to time;

195 (iii) Unless the user provided direction using an online tool, the user  
196 consented to disclosure of the content of electronic communications; or

197 (iv) Disclosure of the content of electronic communications of the  
198 user is reasonably necessary for administration of the estate.

199 Sec. 8. (NEW) (*Effective October 1, 2016*) Unless the user prohibited  
200 disclosure of digital assets or the court directs otherwise, a custodian  
201 shall disclose to the executor of the estate of a deceased user a  
202 catalogue of electronic communications sent or received by the user  
203 and digital assets, other than the content of electronic communications,  
204 of the user, if the executor gives the custodian:

205 (1) A written request for disclosure in physical or electronic form;

206 (2) A certified copy of the death certificate of the user;

207 (3) A certified copy of the certificate of appointment as executor;  
208 and

209 (4) If requested by the custodian:

210 (A) A number, username, address or other unique subscriber or  
211 account identifier assigned by the custodian to identify the user's  
212 account;

213 (B) Evidence linking the account to the user;



214 (C) An affidavit stating that disclosure of the user's digital assets is  
215 reasonably necessary for administration of the estate; or

216 (D) A finding by the court that:

217 (i) The user had a specific account with the custodian that is  
218 identifiable by the information specified in subparagraph (A) of this  
219 subdivision; or

220 (ii) Disclosure of the user's digital assets is reasonably necessary for  
221 administration of the estate.

222 Sec. 9. (NEW) (*Effective October 1, 2016*) To the extent a power of  
223 attorney expressly grants an agent authority over the content of  
224 electronic communications sent or received by the principal and unless  
225 directed otherwise by the principal or the court, a custodian shall  
226 disclose to the agent the content of electronic communications if the  
227 agent gives the custodian:

228 (1) A written request for disclosure in physical or electronic form;

229 (2) An original or copy of the power of attorney expressly granting  
230 the agent authority over the content of electronic communications of  
231 the principal;

232 (3) A certification by the agent, under penalty of perjury, that the  
233 power of attorney is in effect; and

234 (4) If requested by the custodian:

235 (A) A number, username, address or other unique subscriber or  
236 account identifier assigned by the custodian to identify the principal's  
237 account; or

238 (B) Evidence linking the account to the principal.

239 Sec. 10. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered  
240 by the court, directed by the principal or provided by a power of  
241 attorney, a custodian shall disclose to an agent with specific authority

242 over digital assets or general authority to act on behalf of a principal a  
243 catalogue of electronic communications sent or received by the  
244 principal and digital assets, other than the content of electronic  
245 communications, of the principal if the agent gives the custodian:

246 (1) A written request for disclosure in physical or electronic form;

247 (2) An original or a copy of the power of attorney that gives the  
248 agent specific authority over digital assets or general authority to act  
249 on behalf of the principal;

250 (3) A certification by the agent, under penalty of perjury, that the  
251 power of attorney is in effect; and

252 (4) If requested by the custodian:

253 (A) A number, username, address or other unique subscriber or  
254 account identifier assigned by the custodian to identify the principal's  
255 account; or

256 (B) Evidence linking the account to the principal.

257 Sec. 11. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered  
258 by the court or provided in a trust, a custodian shall disclose to a  
259 trustee who is an original user of an account any digital asset of the  
260 account held in trust, including a catalogue of electronic  
261 communications of the trustee and the content of electronic  
262 communications.

263 Sec. 12. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered  
264 by a court, directed by the user or provided in a trust, a custodian shall  
265 disclose to a trustee who is not an original user of an account the  
266 content of an electronic communication sent or received by an original  
267 or successor user and carried, maintained, processed, received or  
268 stored by the custodian in the account of the trust if the trustee gives  
269 the custodian:

270 (1) A written request for disclosure in physical or electronic form;

271 (2) A certified copy of the trust instrument that includes consent to  
272 disclosure of the content of electronic communications to the trustee;

273 (3) A certification by the trustee, under penalty of perjury, that the  
274 trust exists and the trustee is a currently acting trustee of the trust; and

275 (4) If requested by the custodian:

276 (A) A number, username, address or other unique subscriber or  
277 account identifier assigned by the custodian to identify the account of  
278 the trust; or

279 (B) Evidence linking the account to the trust.

280 Sec. 13. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered  
281 by the court, directed by the user or provided in a trust, a custodian  
282 shall disclose, to a trustee who is not an original user of an account, a  
283 catalogue of electronic communications sent or received by an original  
284 or successor user and carried, maintained, processed, received or  
285 stored by the custodian in an account of the trust and any digital  
286 assets, other than the content of electronic communications, in which  
287 the trust has a right or interest if the trustee gives the custodian:

288 (1) A written request for disclosure in physical or electronic form;

289 (2) A certified copy of the trust instrument;

290 (3) A certification by the trustee, under penalty of perjury, that the  
291 trust exists and the trustee is a currently acting trustee of the trust; and

292 (4) If requested by the custodian:

293 (A) A number, username, address or other unique subscriber or  
294 account identifier assigned by the custodian to identify the trust's  
295 account; or

296 (B) Evidence linking the account to the trust.

297 Sec. 14. (NEW) (*Effective October 1, 2016*) (a) After an opportunity for

298 a hearing in the manner prescribed in sections 45a-645a to 45a-645c,  
299 inclusive, of the general statutes, a court may grant a conservator  
300 access to the digital assets of a conserved person.

301 (b) Unless otherwise ordered by the court or directed by the user, a  
302 custodian shall disclose to a conservator the catalogue of electronic  
303 communications sent or received by a conserved person and any  
304 digital assets, other than the content of electronic communications, in  
305 which the conserved person has a right or interest if the conservator  
306 gives the custodian:

307 (1) A written request for disclosure in physical or electronic form;

308 (2) A certified copy of the court order that gives the conservator  
309 authority over the digital assets of the conserved person; and

310 (3) If requested by the custodian:

311 (A) A number, username, address or other unique subscriber or  
312 account identifier assigned by the custodian to identify the account of  
313 the conserved person; or

314 (B) Evidence linking the account to the conserved person.

315 (c) A conservator with general authority to manage the assets of a  
316 conserved person may request a custodian of the digital assets of the  
317 conserved person to suspend or terminate an account of the conserved  
318 person for good cause. A request made under this subsection must be  
319 accompanied by a certified copy of the certificate of appointment  
320 giving the conservator authority over the conserved person's property.

321 Sec. 15. (NEW) (*Effective October 1, 2016*) (a) The legal duties  
322 imposed on a fiduciary charged with managing tangible property  
323 apply to the management of digital assets, including:

324 (1) The duty of care;

325 (2) The duty of loyalty; and

326 (3) The duty of confidentiality.

327 (b) A fiduciary's or designated recipient's authority with respect to a  
328 digital asset of a user:

329 (1) Except as otherwise provided in section 4 of this act, is subject to  
330 the applicable terms-of-service agreement;

331 (2) Is subject to other applicable law, including copyright law;

332 (3) In the case of a fiduciary, is limited by the scope of the fiduciary's  
333 duties; and

334 (4) May not be used to impersonate the user.

335 (c) A fiduciary with authority over the property of a decedent,  
336 conserved person, principal or settlor has the right to access any digital  
337 asset in which the decedent, conserved person, principal or settlor had  
338 a right or interest and that is not held by a custodian or subject to a  
339 terms-of-service agreement.

340 (d) A fiduciary acting within the scope of the fiduciary's duties is an  
341 authorized user of the property of the decedent, conserved person,  
342 principal or settlor for the purpose of applicable computer-fraud and  
343 unauthorized-computer-access laws, including, but not limited to,  
344 section 53a-251 of the general statutes.

345 (e) A fiduciary with authority over the tangible, personal property  
346 of a decedent, conserved person, principal or settlor:

347 (1) Has the right to access the property and any digital asset stored  
348 in it; and

349 (2) Is an authorized user for the purpose of computer-fraud and  
350 unauthorized-computer-access laws, including, but not limited to,  
351 section 53a-251 of the general statutes.

352 (f) A custodian may disclose information in an account to a  
353 fiduciary of the user when the information is required to terminate an

354 account used to access digital assets licensed to the user.

355 (g) A fiduciary of a user may request a custodian to terminate the  
356 user's account. A request for termination must be in writing, in either  
357 physical or electronic form, and accompanied by:

358 (1) A certified copy of the death certificate of the user if the user is  
359 deceased;

360 (2) A certified copy of any one or more of the following that gives  
361 the fiduciary authority over the account:

362 (A) A certificate of appointment as executor;

363 (B) A certificate of appointment as conservator;

364 (C) A power of attorney; or

365 (D) A trust; and

366 (3) If requested by the custodian:

367 (A) A number, username, address or other unique subscriber or  
368 account identifier assigned by the custodian to identify the user's  
369 account;

370 (B) Evidence linking the account to the user; or

371 (C) A finding by a court that the user had a specific account with the  
372 custodian that is identifiable by the information specified in  
373 subparagraph (A) of this subdivision.

374 Sec. 16. (NEW) (*Effective October 1, 2016*) (a) Not later than sixty days  
375 after receipt of the information required under sections 7 to 15,  
376 inclusive, of this act, a custodian shall comply with a request under  
377 any provision of sections 1 to 18, inclusive, of this act from a fiduciary  
378 or designated recipient to disclose digital assets or terminate an  
379 account. If the custodian fails to comply with such request, the  
380 fiduciary or designated recipient may apply to the court for an order

381 directing compliance with the request.

382 (b) An order under subsection (a) of this section directing  
383 compliance with such request must contain a finding that compliance  
384 is not in violation of 18 USC 2702, as amended from time to time.

385 (c) A custodian may notify the user that a request was made under  
386 sections 1 to 18, inclusive, of this act for disclosure or to terminate an  
387 account.

388 (d) A custodian may deny a request under any provision of sections  
389 1 to 18, inclusive, of this act from a fiduciary or designated recipient  
390 for disclosure of digital assets or to terminate an account if the  
391 custodian is aware of any lawful access to the account following the  
392 receipt of the fiduciary's request.

393 (e) Sections 1 to 18, inclusive, of this act do not limit a custodian's  
394 ability to obtain or require a fiduciary or designated recipient  
395 requesting disclosure or termination under sections 1 to 18, inclusive,  
396 of this act to obtain a court order which:

397 (1) Specifies that an account belongs to the conserved person or  
398 principal;

399 (2) Specifies that there is sufficient consent from the conserved  
400 person or principal to support the requested disclosure; and

401 (3) Contains a finding required by law other than the provisions of  
402 sections 1 to 18, inclusive, of this act.

403 (f) A custodian and its officers, employees and agents are immune  
404 from liability for an act or omission done in good faith in compliance  
405 with the provisions of sections 1 to 18, inclusive, of this act.

406 Sec. 17. (NEW) (*Effective October 1, 2016*) In applying and construing  
407 this Connecticut Revised Uniform Fiduciary Access to Digital Assets  
408 Act, consideration must be given to the need to promote uniformity of  
409 the law with respect to its subject matter among states that enact the

410 Revised Uniform Fiduciary Access to Digital Assets Act.

411 Sec. 18. (NEW) (*Effective October 1, 2016*) Sections 1 to 17, inclusive,  
 412 of this act modify, limit or supersede the Electronic Signatures in  
 413 Global and National Commerce Act, 15 USC 7001 et seq., but do not  
 414 modify, limit or supersede Section 101(c) of said act, 15 USC 7001(c) or  
 415 authorize electronic delivery of any of the notices described in Section  
 416 103(b) of said act, 15 USC 7003(b).

417 Sec. 19. Section 45a-334a of the general statutes is repealed. (*Effective*  
 418 *October 1, 2016*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	New section
Sec. 2	<i>October 1, 2016</i>	New section
Sec. 3	<i>October 1, 2016</i>	New section
Sec. 4	<i>October 1, 2016</i>	New section
Sec. 5	<i>October 1, 2016</i>	New section
Sec. 6	<i>October 1, 2016</i>	New section
Sec. 7	<i>October 1, 2016</i>	New section
Sec. 8	<i>October 1, 2016</i>	New section
Sec. 9	<i>October 1, 2016</i>	New section
Sec. 10	<i>October 1, 2016</i>	New section
Sec. 11	<i>October 1, 2016</i>	New section
Sec. 12	<i>October 1, 2016</i>	New section
Sec. 13	<i>October 1, 2016</i>	New section
Sec. 14	<i>October 1, 2016</i>	New section
Sec. 15	<i>October 1, 2016</i>	New section
Sec. 16	<i>October 1, 2016</i>	New section
Sec. 17	<i>October 1, 2016</i>	New section
Sec. 18	<i>October 1, 2016</i>	New section
Sec. 19	<i>October 1, 2016</i>	Repealer section

**Statement of Legislative Commissioners:**

In Section 2(6)(B), "a custodian providing" was deleted to avoid repetition, in Section 2(18), the provisions were rewritten for accuracy, in Sections 7 and 8, "representative" was changed to "executor" for consistency with the defined term, and throughout the bill "as



amended from time to time" was added after citations to the U.S. Code and technical changes were made for accuracy and proper form.

**JUD**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill gives fiduciaries access to a represented person's digital assets and does not result in a fiscal impact to the state or municipalities.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****HB 5606*****AN ACT CONCERNING THE CONNECTICUT REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.*****SUMMARY:**

This bill establishes the "Connecticut Revised Uniform Fiduciary Access to Digital Assets Act," extending a fiduciary's existing authority over a represented person's tangible assets to include the person's digital assets (i.e., electronic records). The bill specifies the conditions under which fiduciaries have the right to access digital assets.

The bill applies to four types of fiduciaries, regardless of when their authority became effective:

1. executors or administrators of deceased persons' estates,
2. court-appointed conservators of protected persons' estates,
3. agents appointed under powers of attorney, and
4. trustees.

The bill establishes the processes fiduciaries must follow to gain access to a represented person's digital assets or terminate an account used to access such assets. A fiduciary must send a written request to the custodian along with (1) a certified copy of the document granting fiduciary authority, such as a letter of appointment, court order, or certification of trust and (2) certain other information the custodian requests, such as account verification.

The custodian is the person who carries, maintains, processes, receives, or stores an account holder's digital asset. A custodian must generally comply with a request within 60 days after receiving it and is

immune from any liability for an act or omission done in good faith compliance. The bill applies to a custodian if the account holder (i.e., user) resides in Connecticut or did so at the time of death.

Under the bill, a user, through an online tool, may direct a custodian to allow or limit access to a designated person (recipient). (An “online tool” is an electronic service provided by a custodian that allows a user, in an agreement distinct from a service agreement, to provide directions for disclosure or nondisclosure of digital assets to a third person.)

A fiduciary or designated recipient has the same access rights as the represented person. A custodian’s service agreement that restricts a fiduciary’s or designated recipient’s access to the user’s digital assets is void unless the user gave separate affirmative consent.

The bill does not apply to an employer's digital assets used by employees in the ordinary course of business.

It replaces the provisions under current law that require email service providers to give estate executors and administrators access to, or copies of, the email account of a decedent domiciled in Connecticut when he or she died.

EFFECTIVE DATE: October 1, 2016

#### **§ 4 — DESIGNATED RECIPIENT’S AUTHORITY**

Under the bill, if a custodian’s online tool allows, at all times, a user to modify or delete a direction about disclosure to a designated recipient, the direction overrides the user’s contrary direction in a will, trust, power of attorney, or other record.

If a user has not given any such direction to the custodian through an online tool or the custodian has not provided such a tool, the user may allow or prohibit disclosure, in a will, trust, power of attorney, or other record, to a fiduciary of some or all of the user's digital assets, including electronic communications the user sent or received.

**§§ 7-14 — FIDUCIARY'S ACCESS TO DIGITAL ASSETS**

The bill distinguishes the level of access a fiduciary may have to a user's digital assets and the conditions under which the custodian must grant such access.

***Level of Access***

Unless otherwise ordered by a court, directed by the represented person, or provided by the document granting authority, the bill allows a fiduciary to access:

1. the content of electronic communications to the extent allowed under federal privacy laws (i.e., content disclosure);
2. the "catalogue of electronic communications" sent or received by the represented person; or
3. other digital assets, content excluded, in which the represented person has a right or interest (or had a right or interest at the time of death).

Under the bill, "catalogue of electronic communications" means the (1) identifying information and email address of each person with whom the account holder communicated and (2) time and date of the communication.

***Conditions***

Generally, a trustee who is not an original user, an executor, an agent, or a conservator may access the content of a user's electronic communications if the user expressly authorized or a court ordered such a disclosure. Specific access to the content of electronic communications must be expressly authorized in the document granting fiduciary authority that accompanies the written request (see below).

On the other hand, unless the user prohibited the disclosure or the court directed otherwise, a fiduciary may access (1) a catalogue of electronic communications the user sent and received and (2) other

digital assets, excluding content.

### ***Written Request and Document Granting Fiduciary Authority***

A fiduciary's request to the custodian for access to digital assets must be in writing and accompanied by the following documents, as applicable and depending on the type of fiduciary:

1. a certified copy of the (a) certificate of appointment as executor and (b) the user's death certificate;
2. an original or a copy of the power of attorney granting the agent authority and a certification, under penalty of perjury, that the power of attorney is in effect;
3. a certified copy of the court order that gives the conservator authority over the digital assets; or
4. a certified copy of the trust instrument and a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.

### ***Custodian's Request for Additional Information***

Regardless of the level of access requested, a fiduciary must also provide the following information if requested by the custodian:

1. a number, username, address, or other unique subscriber or account identifier the custodian assigned to identify the user's account or
2. evidence linking the account to the user, principal, trust, or conserved person, as applicable.

### ***Additional Requirements***

In addition to the requirements described above, other specific requirements apply to executors and conservators depending on the level of access requested.

***Executors.*** An executor requesting content disclosure, unless the

user provided direction using an online tool, must give the custodian a copy of the user's will, trust, power of attorney, or other record showing the user's consent to such disclosure.

The custodian may ask an executor to provide a court order that finds that the user had a specific identifiable account with the custodian or that:

1. the user consented to disclosure of the content,
2. disclosure would not violate federal or other applicable electronic communications or customer privacy laws, or
3. disclosure is reasonably necessary for administration of the estate.

If the executor requested access to digital assets but not access to the content, the custodian may ask for (1) an affidavit or a court order stating that such disclosure is reasonably necessary for administration of the estate or (2) a court order that finds that the user had a specific identifiable account with the custodian.

**Conservators.** A court may grant a conservator access to electronic communications and other digital assets after a legal process and a court proceeding, as is required for accessing a protected person's tangible assets under existing law.

A conservator with general authority to manage the assets of a conserved person may ask a custodian to suspend or terminate the person's account for good cause. Such a request must be accompanied by a certified copy of the certificate of appointment giving the conservator authority over the person's property.

### ***Trustee Who is an Original User***

A custodian must disclose to a trustee who is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

**§§ 5-6 & 16 — CUSTODIAN'S COMPLIANCE*****Terms-of-Service Agreement (§ 5)***

The bill specifies that it does not change or impair a custodian's or user's rights under a service agreement to access and use the user's digital assets. But, a service agreement provision that restricts a fiduciary's access to the digital assets held by a custodian is void unless the user gave separate affirmative consent.

***Compliance in General (§ 16)***

A custodian must comply within 60 days after receiving all required documents in support of a disclosure or an account termination request from a fiduciary or a designated recipient. If the custodian fails to comply, the fiduciary or designated recipient may apply for a court order that directs compliance. An order directing compliance must state that such compliance would not violate federal requirements regarding voluntary disclosure of customer communications or records.

***Compliance When User is Alive (§ 16)***

When a user is still alive, the custodian may (1) notify the user that a request was made to disclose information or terminate an account; (2) deny a request if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request; or (3) obtain, or require a requestor to obtain, a court order.

The court order must specify:

1. that the account belongs to a conserved person or principal;
2. that there is sufficient consent from the conserved person or principal to support the requested disclosure; and
3. a finding required by law other than the bill's provisions.

***Disclosure (§ 6)***

When disclosing a user's digital assets, the custodian may:



1. grant a fiduciary or designated recipient full access to the user's account;
2. grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
3. provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

A custodian need not disclose a digital asset a user deleted.

### ***Fees (§ 6)***

A custodian may charge a reasonable administrative fee for the cost of disclosing digital assets.

### ***Undue Burden (§ 6)***

A custodian directed or asked to disclose some of the user's digital assets does not have to do so if separating them would unduly burden the custodian. In such a case, the custodian or fiduciary may seek a court order to disclose:

1. a subset, limited by date, of the user's digital assets;
2. all of the user's digital assets to the fiduciary or designated recipient;
3. none of the user's digital assets; or
4. all of the user's digital assets to the court for in camera review (in private) in order to issue an order.

## **§ 15 — FIDUCIARY'S DUTIES**

Under the bill, the legal duties that apply to a fiduciary charged with managing tangible property also apply to fiduciaries managing digital assets. These include the duty of care, loyalty, and

confidentiality.

A fiduciary's or designated recipient's authority with respect to a user's digital asset (1) is subject to copyright and other applicable law, (2) is limited by the scope of the fiduciary's duties, (3) may not be used to impersonate the user, and (4) is subject to any applicable terms-of-service agreement that was not overridden by a user's direction.

A fiduciary with authority over the property of a decedent, conserved person, principal, or settlor has the right to access any digital asset in which the decedent, conserved person, principal or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, conserved person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws.

A fiduciary with authority over the tangible, personal property of a decedent, conserved person, principal, or settlor (1) has the right to access the property and any digital asset stored in it and (2) is an authorized user for the purpose of computer fraud and unauthorized computer access laws.

## **§ 15 — TERMINATING AN ACCESS ACCOUNT**

A custodian may disclose information in a user's account to a fiduciary when the information is required to terminate an account used to access digital assets licensed to the user.

A fiduciary request to a custodian to terminate a user's account must be in writing and accompanied by:

1. a certified copy of the user's death certificate if the user is deceased;
2. a certified copy of the applicable document granting fiduciary authority over the account; and

3. if requested by the custodian, (a) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account; (b) evidence linking the account to the user; or (c) a court finding that the user had a specific account with the custodian that is identifiable by the information specified above.

## **§§ 17 & 18 — EFFECT ON OTHER LAWS**

The bill specifies that a person applying and construing its provisions must give consideration to the need to promote uniformity among other states that also adopt these provisions.

It also specifies that its provisions modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act (ESIGN), except for the consumer disclosure requirements (15 U.S.C. § 7001, et seq.) (see BACKGROUND). The bill does not authorize the electronic delivery of the notices described under ESIGN, such as court orders, notices, or official documents (15 U.S.C. § 7003(b)).

## **BACKGROUND**

### ***ESIGN Act***

The ESIGN Act provides that a contract or signature may not be denied legal effect, validity, or enforceability solely because it is in electronic form. A state statute, regulation, or other rule of law may modify, limit, or supersede the ESIGN provisions. It generally does not apply to a contract or other record that governs the creation and execution of wills, codicils, or testamentary trusts (P. L. 106-229).

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 43      Nay 0      (03/21/2016)